In the High Court of Judicature at Madras

Dated: 15.03.2007

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THE HONOURABLE Mr.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE Mr.JUSTICE S.TAMILVANAN

Writ Appeal No.1016 of 2006
and
Cross Objection No.11 of 2007
and
W.P.No.22507 of 2006
and
M.P.No.1/2006 & 1/2007 in W.A.No.1016/2006 and
M.P.No.1/2006 in W.P.No.22507 of 2006

Writ Appeal No.1016/2006:-

1.Villupuram Market Committee,
rep. By its Special Officer,
Villupuram.

2.The Secretary,
Villupuram Market Committee,
Villupuram.

3.The Superintendent,
Regulated Market, Villupuram : Appellants (Respondents)

Vs.

K.Sekar : Respondent (Petitioner)

Writ Appeal filed against the Order made in W.P.No.18567/ 2006, dated 20.06.2006.

W.P.No.18567/2006 :- Petition presented to this Court under Article 226 of the Constitution of India to issue a Writ of Certiorari Calling for the records on the file of the 2nd respondent relating to the impugned order bearing Reg.No.D1/1151/2006 dated 15.6.2006 and quash the same.

For Appellants : Mr.P.Wilson
For Respondent : Mr.N.R.Chandran, Senior counsel
for M/s.Sai Bharath & Ilan

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Cross Objection No.11 of 2007 :-

K.Sekar : Petitioner (Respondent)

Vs.

1.Villupuram Market Committee,
rep. By its Special Officer,
Villupuram.

2.The Secretary,
Villupuram Market Committee,
Villupuram.

3.The Superintendent,
Regulated Market, Villupuram : Respondents

Cross Objection filed in W.A.No.1016/2006, against the Order made in W.P.No.18567/ 2006, dated 20.06.2006.

For Petitioner : Mr.N.R.Chandran, Senior counsel
for M/s.Sai Bharath & Ilan
For Respondents: Mr.P.Wilson

Writ Petition No.22507/2006:-

K.Sekar : Petitioner

Vs.

1.Villupuram Market Committee,
rep. By its Special Officer,
Villupuram.

2.The Secretary,
Villupuram Market Committee,
Villupuram.

3.The Superintendent,
Regulated Market, Villupuram : Respondents

Writ Petition filed for a writ of Certiorari, calling for the records on the file of the second respondent relating to the impugned Order bearing Ref. No.D1/1151/2006 dated 12.07.2006 and quash the same.

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For Petitioner : Mr.N.R.Chandran, Senior counsel
for M/s.Sai Bharath & Ilan
For Respondents: Mr.P.Wilson

C O M M O N - J U D G M E N T

(Judgment was delivered by Mr.F.M.IBRAHIM KALIFULLA,J)

The Writ Appeal and the Cross-Objection have been filed by the petitioner and respondents in the Writ Petition challenging the order of the learned Single Judge dated 20.06.2006 passed in W.P.No.18567 of 2006. The respondents in the Writ Petition are the Appellants in W.A.No.1016 of 2006. While, the writ petitioner is the petitioner in Cross-Objection No. 11 of 2007. The very same writ petitioner has preferred W.P.No. 22507 of 2006 as against the order of the appellants dated 12.07.2006, cancelling the extension of lease granted in favour of the writ petitioner in respect of the weigh-bridge in the Villupuram Market Committee in the extension order dated 3.4.2006.

2. In the Villupuram Market area, a weigh-bridge was stated to have been purchased in the year 2001 and the maintenance contract was granted in favour of the writ petitioner by letter dated 12.06.2002. Initially, the contract was for a period of eleven months. The said contract was extended for a further period of eleven months from 13.06.2003 to 12.05.2004 by order dated 9.6.2003. It was subsequently, extended by letter dated 23.06.2004 for a further period of eleven months from 13.06.2004. The Villupuram Market Committee's term came to an end on 3.4.2006. The twenty two months' period, which was granted by order dated 23.6.2004 was to expire on 12.4.2006. However, on the last date, when the Market Committee's term itself came to an end on 3.4.2006, the Committee through its Secretary extended the period of lease for a period of three years viz., from 13.4.2006 to 12.4.2009 with 10% of increase on the existing rate. Since, the term of Office of the Market Committee came to an end on 3.4.2006, the State Government in exercise of the powers vested with it under Sub-Section 1 of Section 33 of the Tamilnadu Agricultural Produce Marketing (Regulation) Act 1987, issued G.O.Ms.No. 92 dated 3.4.2006, appointing the Joint Director of Agriculture as Special officer of the Appellants-Market Committee. He also took charge of the Office of Special Officer in the afternoon of 3.4.2006. Thereafter, the second appellant issued its proceeding dated 15.6.2006, cancelling the extension of the lease granted earlier in its order dated 3.4.2006.

3. The writ petitioner preferred W.P.No. 18567 of 2006, challenging the order of the second appellant dated 15.6.2006. The said Writ Petition was disposed of by the learned Single Judge by

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order dated 20.06.2006 holding that the order of cancellation was passed in violation of the principles of natural justice and that the lease granted after obtaining the consent of the Market Committee cannot be cancelled merely based on the opinion of the Government Pleader and that the alleged administrative reasons were not spelt out and they were vague. While, setting aside the order dated 15.6.2006 of the second appellant, the learned Single Judge, however held that as per the terms and conditions available with the Appellants-Market Committee, there could not have been an extension of lease for more than eleven months at a time and therefore, the period of lease, which was extended by the proceedings dated 3.4.2006 should be confined only for a period of eleven months commencing from 13.04.2006 and that any further extension should be subject to the decision of the appellants. Therefore, while setting aside the order dated 15.06.2006, the learned Single Judge gave liberty to the appellants to cancel the lease and to conduct auction in accordance with law by giving due opportunity to the writ petitioner. Thereafter, the appellants issued a fresh show cause notice dated 29.06.2006 to the writ petitioner calling upon him to explain as to, why the extension of lease granted under the proceedings dated 3.4.2006 should not be cancelled. In the present show cause notice, the appellants gave as many as eight reasons as to, why they are proposing to cancel the extension of lease granted to the writ petitioner. The writ petitioner filed his explanation dated 4.7.2006. Thereafter, the appellants by their order dated 12.07.2006, cancelled its earlier proceedings dated 3.4.2006. It is as against the said order of cancellation of the extension of lease dated 3.4.2006, the petitioner has come forward with the subsequent Writ Petition in W.P.No. 22507 of 2006.

4. When the appellants preferred the present Writ Appeal, on 8.8.2006, the Appellants were directed to serve notice on the writ petitioner returnable by 23.08.2006. The First Bench also stated that, while serving notice on the writ petitioner, the appellants should indicate that the Appeal itself would be disposed of at the admission stage. Subsequently, the Appeal was posted on 29.08.2006. The First Bench of this Court admitted the Writ Appeal and posted the same for final disposal. While, admitting the Writ Appeal, since notice had already been served on the writ petitioner, the First Bench waived service of notice on the writ petitioner. Thereafter, the writ petitioner filed his Cross-Objection in the Writ Appeal on 21.09.2006.

5. Mr.P.Wilson, the learned counsel appearing for the Appellants, in his submissions contended that the Cross-Objection filed by the writ petitioner was barred y time and therefore it is not maintainable. According to the learned counsel, the writ petitioner having failed to challenge that part of the order of the learned Single Judge in holding that the period of lease could not

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have been extended beyond eleven months in the order dated 03.04.2006, which has become final and since eleven months period from 03.04.2006 had come to an end on 12.03.2007, nothing would survive for the writ petitioner to agitate in these proceedings. The learned counsel would contend that since the provisions of Civil Procedure Code are not applicable to writ petitions as well as the writ appeal arising out of a writ petition, the writ petitioner cannot maintain the cross-objection in this writ appeal.

6. In support of his submissions, the learned counsel appearing for the appellants relied upon AIR 1996 SC 1092 (PURAN SINGH Vs. STATE OF PUNJAB), AIR 1997 ANDHRA PRADESH 179 (HON'BLE SECRETARY AND CORRESPON-DENT Vs. STATE OF ANDHRA PRADESH), (1999) 4 Supreme Court Cases 423 (SUPERINTENDING ENGINEER Vs.B.SUBBA REDDY), (2004) 3 Supreme Court Cases 214 (JAMSHED HORMUSJI WADIA Vs. BOARD OF TRUSTEES, PORT OF MUMBAI).

7. The learned counsel appearing for the appellants also made his submissions on the merits of the claims of the writ petitioner as regards his entitlement for renewal of the lease in respect of weigh-bridge, without taking recourse to the normal procedure of public auction. According to the learned counsel, such a recourse adopted by the Market Committee being contrary to the well established procedure and against the interest of the Market Committee, on that ground as well, the appellants were justified in cancelling the lease, which was granted for a period of three years, which was against the interest of the Market Committee.

8. For that proposition, the learned counsel relied upon the decision reported in AIR 1980 SC 1992 (KASTURI LAL Vs. STATE OF J.& K.), AIR 1979 SC 1628 (RAMANA Vs. I.A.AUTHORITY OF INDIA), AIR 1985 SC 1147 (RAM AND SHYAM CO. Vs. STATE OF HARYANA), 1994 (1) SCC 475 (COMMITTEE OF MANAGEMENT OF PACHAIYAPPA'S TRUST Vs. OFFICIAL TRUSTEE OF MADRAS) and 2005 (I) CTC 81 (SELVARANI Vs. THE COMMISSIONER, KARAIKUDI, MUNICIPALITY).

9. The learned counsel further relied upon Section 23(2) of the Act and contended that their being no contract reduced to writing in the case of the writ petitioner, the same was in violation of Rule 100 and therefore, for not following the statutory procedure the lease was liable to be terminated. It was also contended that by virtue of Section 2(d) and 3 of the Tamil Nadu Transparency in Tenders Act, 1998, without calling for tenders, the lease granted in favour of the writ petitioner by way of renewal was not permissible in law and therefore, on that ground also the lease was liable to be terminated and therefore, the termination of the lease by order dated 12.07.2006 was perfectly justified.

10. As against the above submissions, Mr.N.R.Chandran, the

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learned Senior Counsel appearing for the writ petitioner, contended that the Cross-Objection of the petitioner was maintainable, and it was filed well within time and that the learned Single Judge was not justified in holding that the period of lease would be restricted to eleven months from 3.4.2006, since the same was not the issue to be dealt with in the Writ Petition.

11.According to the learned Senior Counsel, the learned Single Judge ought not to have dealt with the said question and the same was not binding on the writ petitioner, inasmuch as the writ petitioner was not heard on that issue by the learned Single Judge. The learned Senior Counsel has further contended that the cancellation of the lease in the order dated 3.4.2006 is also liable to be set aside, since the Appellants had prejudged itself to terminate the lease as has been disclosed in the show cause notice itself and therefore, the issuance of show cause notice was only an empty formality for passing the order of cancellation of lease dated 12.7.2006.

12. The learned Senior Counsel relied upon 1991 (2) MLJ 635 (THE TAMIL NADU ELECTRICITY BOARD Vs. R.SRINIVASAN), 1984 (I) LLJ 248 (C.UMAPATHY Vs. THE MANAGER (MARKETING), TAMILNADU DAIRY DEVELOPMENT CORPORATION), (2000) 1 SUPREME COURT CASES 128 (ANIL KUMAR GUPTA Vs. MUNICIPAL CORPORATION OF DELHI), 2005 (2) CTC 232 (K.VENKATACHALA BHAT Vs. KRISHNA NAYAK (D) BY LRs.) and (2004) 8 SUPREME COURT CASES 262 (EXECUTIVE ENGINEER Vs. DIGAMBARA RAO).

13. The learned Senior Counsel also relied upon Rule 2 (5) (b) of the Appellate Side Rules read along with Or.4 R.9(1) C.P.C. to contend that the provisions of Civil Procedure Code are equally applicable to the Writ Appeal proceedings filed under Clause 15 of the Letters Patent.

14. Having regard to the learned counsel for the respective parties, at the outset, we wish to stear clear of the position, whether the Code of Civil Procedure is applicable to the Letters Patent Appeal, in order to enable the writ petitioner to maintain his Cross-Objection. In this respect, when we perused the decisions relied upon by the learned counsel for the appellants, in the decision reported in AIR 1996 SUPREME COURT 1092 (PURAN SINGH Vs. STATE OF PUNJAB), the Honourable Supreme Court, after referring to the specific exclusion as contained in explanation to Section 141 C.P.C. held that the Writ Petition under Article 226 of the Constitution of India, is essentially different from a Suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226.

15. The Honourable Supreme Court, while examining the above

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issue has also stated that, when the High Court exercises the extraordinary jurisdiction under Article 226 of the Constitution of India, it aims at securing a very speedy and efficacious remedy to a person, whose legal or constitutional right has been infringed and if all the elaborate and technical rules laid down in the Code are to be followed in the writ proceedings, the very object and purpose is likely to be defeated. In paragraph No.5 of the said judgment, the Honourable Supreme Court therefore held thus:

> "... If because of the explanation, proceeding under Article 226 of the Constitution has been excluded, there is no question of making applicable the procedure of Code as far as it can be made applicable' to such proceeding. The procedures prescribed in respect of suit in the Code if are made applicable to the writ proceedings then in many cases it may frustrate the exercise of extra-ordinary powers of the High Court under Articles 226 and 227 of the Constitution..."

16. The Honourable Supreme Court stated the above legal position when it dealt with a case, which arose from the State of Punjab and Haryana, where under Rule 32 of the Writ Rules, it would provide that, in all matters for which no provision is made in the Writ Rules, the provisions of the code of Civil Procedure shall apply mutatis mutandis insofar as they are not inconsistent with the Writ Rules. While stating so, as regards the Writ Petition filed under Articles 226 and 227 of Constitution of India, the Honourable Supreme Court also stated in Paragraph 9 thus:

> "...The High Court should be left to adopt its own procedure for granting relief to the persons concerned. The High Court is expected to adopt a procedure which can be held to be not only reasonable but also expeditious...."

Thereafter, the Honourable Supreme Court specifically stated in Paragraph 10 as under:-

> "...10.As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not mean that the Petitioner or the appellant in such Writ Petition or writ appeal can ignore the death of the Respondent if the right to pursue remedy even after death of the Respondent survives..."

17. In the decision reported in 1999 (4) SCC 423

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(SUPERINTENDING ENGINEER AND OTHERS VS. B.SUBBA REDDY), the Honourable Supreme Court, while dealing with a question, whether a Cross-Objection could be permitted to be filed in an Appeal filed under Sections 41 and 39 of the Arbitration Act, 1940, has held as under in Paragraph 24:-

> "...24.In the present case, as noted above, the Respondent did not file any appeal under Section 39 of the Act in the High Court which right he admittedly had when the award of interest @ 18% per annum was reduced to 12% per annum by the trial Court. Section 41 of the Act is merely procedural in nature. If there is no right of cross-objection given under Section 39 of the Act, it cannot be read into Section 41 of the Act. Filing of cross-objection is not procedural in nature. Section 41 of the Act merely prescribes that the procedure of the Code would be applicable to the appeal under Section 39 of the Act. We are, therefore, of the opinion that cross-objection by the Respondent was not maintainable and the High Court was not correct in holding otherwise and restoring the award of interest to 18% per annum and thus interfering in the Decree of the trial Court...."

18. In the decision reported in 2004(3) SCC 214 (JAMSHED HORMUSJI WADIA VS. BOARD OF TRUSTEES, PORT OF MUMBAI AND ANOTHER), the Honourable Supreme Court, while dealing with Appeal by Special Leave filed under Article 136 of the Constitution of India was concerned with the question, whether Cross-Objection could be permitted to be filed by invoking Or.41 R.22 C.P.C., in that context the Honourable Supreme Court has held as under in Paragraph 32:-

> ".....32.BPT has filed cross-objections. A question of significance arises whether a cross-objection, as contemplated by Order 41, Rule 22 of the Civil Procedure Code, 1908, is at all maintainable in a civil appeal by special leave under Article 136 of the Constitution of this Court. No decision by this Court squarely dealing with the point has been brought to our notice. Alopi Nath Vs. Collector, Varanasi too is not directly on the point but comes very near to it. A question as to the admissibility of cross-objections under a local law of Uttar Pradesh arose for the consideration of this Court. The U.P.Nagar Mahapalika Adhiniyam, 1959 had constituted a tribunal with power and functions of the Court to deal with reference arising out of acquisition of land for U.P.Municipal Corporation

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under the Land Acquisition Act, 1894. The Indian Evidence Act, 1872 and the Code of Civil Procedure, 1908 apply to all proceedings before the Tribunal. Its decision are final subject to appeal under sub-section(1) of Section 381 which reads as under:-

"381.Appeals.- (1)An appeal to the High Court shall lie from a decision of the Tribunal, if -

(a)the Tribunal grants a certificate that the case is a fit one for appeal, or

(b)the High Court grants special leave to appeal, provided that the High Court shall not grand such special leave unless the Tribunal has refused to grant a certificate under clause (a).

* * *

(3)Notwithstanding anything contained in the foregoing provisions, no appeal shall lie under this section unless the appellant has deposited the money which he is liable to pay under the Order from which the appeal is filed.

(4)Subject to the provisions of sub-section(1), the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees, shall, so far as may be, apply to appeals under this Act.

(5)(i)An application for the grant of a certificate under clause (a) of sub-section(1) may be made within thirty days from the date of decision of the Tribunal.

(ii)An appeal against the decision of the Tribunal may be preferred within sixty days from the date of grant of the said certificate.

(iii)An application to the High Court for special leave to appeal under clause (b) of sub-section(1) may be made within sixty days from the date of the Order of refusal of the said certificate.

* * *

A question arose whether cross-objections are maintainable before the High Court in an appeal under Section 381. This Court held that the provision of Order 41 Rule 22 CPC is inconsistent with the provisions of the said Act inasmuch as an appeal is admissible only by a certificate or special leave under Section 381. "It is difficult to contend that a cross-objection is anything other than an appeal as generally understood in law". [SCC P.693, para 1] The cross objection was held to be not maintainable..."

19. As against the above decisions relied upon by the learned

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counsel for the appellants, on behalf of the writ petitioner, the learned Senior Counsel placed heavy reliance upon the Division Bench decision of this Court reported in 1991 (2) MLJ 635 (THE TAMIL NADU ELECTRICITY BOARD Vs. R.SRINIVASAN). The Division Bench in the opening paragraph of the judgment has held as under:-

> "...The writ appeal has been preferred against the Order of the learned Single Judge in W.P.No.11437 of 1981. There is no gainsaying that the Writ Petition is one preferred under Art.226 of the Constitution of India. However, the writ appeal is one preferred pursuant to Clause 15 of the Letters Patent of this Court. We are adverting to this fact for the purpose of showing that we are exercising appellate jurisdiction, and not a jurisdiction as conferred by Art.226 of the Constitution of India, though the decision in the writ appeal may take in a discussion of the relevant aspects under that Article. For the said appellate jurisdiction, the Code of Civil Procedure, hereinafter referred to as the Code, would apply. A view to the said effect has been expressed by a Bench of this Court, to which one of us (Nainar Sundaram, J.) has been a party in Govindarajulu and another Vs.Dharman and another, CMA SR.No.76357 of 1980 and C.M.P.S.R.No.76358 of 1980, Order dated 27.7.1984, concisely reported in 1984 TLNJ 279, wherein it has been noted "When the statute directs on appeal to an ordinary civil Court, without in any manner circumscribing the practice, procedure and powers of such Court as a civil appellate Court, the Court will have to deal, with the appeal, with all the trappings and powers as an ordinary civil Court of appeal". The definition of "Code" as found in Sec.2 (1) of the Code, includes rules. "Rules" as defined by Sec.2(18) of the Code takes in rules and forms contained in the First Schedule or made under Sec.122 or Sec.125 of the Code. There are rules of this Court on its Appellate Side, hereinafter referred to as the Appellate Side Rules, formulated pursuant to powers under Sec.122 of the Code. There are rules bearing the nomenclature Civil Rules of Practice, which are also formulated pursuant to powers under Sec.122 of the Code. The Civil Rules of Practice may not apply to this Court and they are intended for Courts, subordinate to this Court. We are obliged to trace the above features, legal in character in view of the point that has arisen before, us, which relates to the entry of a new

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> counsel in the place of a counsel, who earlier entered appearance for the party, and who has given his consent in writing for change of appearance and the insistence of the office of this Court to obtain orders of Court for that purpose, on an application to be taken out in this behalf..".

20. In the decision reported in 2000(1) SCC 128 (ANIL KUMAR GUPTA Vs. MUNICIPAL CORPORATION OF DELHI), the Honourable Supreme Court has held as under:-

> "...even SLP filed under Article 136 of the Constitution of India, Cross-Objections by the opposite party was permissible and it can assail the findings adverse to it in the impugned Judgment, without filing its own SLP based on the Principles referable to Or.41, R.22 C.P.C..."

21. In the judgment reported in 2005 (2) CTC 232 (K.VENKATACHALA BHAT Vs.KRISHNA NAYAK) the Honourable Supreme Court took the view that the Provisions contained in Or.23 R.3 C.P.C. as regards recording of compromise, can be pressed into service in Writ Jurisdiction also.

22. In the decision reported in (2004) 8 SUPREME COURT CASES 262 (EXECUTIVE ENGINEER Vs. DIGAMBARA RAO), the Honourable Supreme Court stated that the general principle of resjudicata applies to an industrial adjudication, which was the subject matter of Writ Petition under Article 226 of the Constitution of India.

23. The Writ Appeal preferred is by virtue of Cl.15 of the Letters Patent and the format of the Appeal has been as prescribed under Appellate Side Rules of this Court. Under Or.4 R.9(1) of Appellate Side Rules, it is stipulated that "...every proceeding, which is not instituted in conformity with the provisions of the Code or of the Appellate Side Rules or of any special enactment or of the rules applicable to it, shall be returned to the party or the practitioner concerned for amendment and representation...". Therefore, in the first blush, the above referred to decisions relied upon by the writ petitioner gives an impression that the provisions of the Civil Procedure Code could be as a matter of right invoked in an Appeal filed under Clause 15 of the Letters Patent, in fact, the Division Bench decision relied upon by the learned counsel for the writ petitioner specifically states that the Writ Appeal filed under Clause 15 of the Letters Patent is in exercise of the Appellate Jurisdiction of this Court and therefore, the Code of Civil Procedure would apply in all force.

24. However, when we refer to the decision of the Honourable

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Supreme Court reported in AIR 1996 SC 1092 (PURAN SINGH Vs. STATE OF PUNJAB), the elaborate discussion contained therein, which have been extracted by us in the earlier part of our order, we find that the position is entirely different than what has been stated in the Division Bench judgment.The Honourable Supreme Court has not stated the legal position confining to the proceedings under Article 226 of the Constitution of India alone. In fact, in paragraph 10 of the said judgment, the Honourable Supreme Court has specifically stated that the ratio laid therein was not only with reference to the Writ Petition, but was applicable to the Writ Appeal as well. In fact, the Writ Appeal is nothing, but the continuation of the proceedings of the Writ Petition filed under Article 226 of the Constitution of India. In fact, the Division Bench of this Court in the decision reported in 1991 (2) MLJ 635 was conscious of the fact that the decision in the writ appeal had to necessarily take in a discussion of the relevant aspects of Article 226 of the Constitution though such a writ appeal is preferred under Clause 15 of the Letters Patent. In this context, it will be worth while to refer to the decision of the Honourable Supreme Court reported in 1986 (SUPP) SCC 401 (UMAJI KESHAO MESHRAM Vs.RADHIKABAI), wherein the Honourable Supreme Court has highlighted, how the Appellate Side Rules framed by invoking the Sections 122 and 125 of the Civil Procedure Code will have to be confined strictly to the proceedings covered by the Civil Procedure Code. In paragraph 110 of the said judgment, the Honourable Supreme Court has stated as under:

> "... In fact, proceeding under Article 226 cannot be governed by rules made by the high Courts under the Code of Civil Procedure, 1908. Under Sections 122 and 125 of the Code, the High Courts are conferred the power to make rules regulating their own procedure and the procedure of the civil courts subject to their superintendence and they can by such rules annul, after or add to all or any of the rules in the First Schedule to the Code. These rules are, therefore, intended to regulate the exercise of procedure in respect of matters to which the Code applies. The Code deals with suits and appeals, reference, review and revision arising out of orders and decrees passed in suits..."

25. As we are bound by the above categoric pronouncement of the Honourable Supreme Court, we are unable to follow the Division Bench decision relied upon by the learned senior counsel for the writ petitioner reported in 1991 (2) MLJ 635 (THE TAMIL NADU ELECTRICITY BOARD Vs. R.SRINIVASAN). We therefore, prefer to follow the decision of the Honourable Supreme Court and hold that the Code of Civil Procedure will have no application in respect of the Writ Appeal proceedings filed under Clause 15 of the Letters Patent, though, it is an Appellate proceedings, it is nonetheless the continuation of

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the proceedings initiated under Article 226 of the Constitution, to which the provisions of the Code of Civil Procedure are not applicable as per the Explanation to Section 141 of CPC.

26. We reiterate that, even though it is in the nature of an Appeal under Clause 15 of the Letters Patent, inasmuch as such an Appeal is as against the order of the learned Single Judge passed in exercise of the extraordinary jurisdiction vested with the learned Single Judge under Article 226 of the Constitution, the Appellate remedy as against the said order is nothing, but continuation of the very Constitutional remedy, which was available to the writ petitioner under Article 226 of the Constitution of India. Mere provision of an Appeal before the Division Bench as provided under Clause 15 of the Letters Patent cannot be held to be an independent proceedings of the remedy, which was invoked by the writ petitioner under Article 226 of the Constitution of India. In other words, the Letters Patent Appeal as against an order passed under Article 226 of the Constitution cannot be dealt with in isolation or disjunctive of the parent proceeding, namely the writ petition, from which alone it stems up.

27. We are therefore convinced that in the Writ Appeal proceedings, the writ petitioner cannot be permitted to invoke the provisions of the Civil Procedure Code, in order to maintain his Cross-Objection by invoking Or.41 R.22 of Civil Procedure Code, which is wholly inapplicable to such a Writ Appeal. Inasmuch as we have held that the writ petitioner is not entitled to invoke the provisions of the Civil Procedure Code to maintain his Cross-Objection under Or.41 R.22 C.P.C., the Cross-Objection of the writ petition is not legally sustainable. Once the Cross-Objection is not sustainable, there is no question of considering the correctness or otherwise of the order of the learned Single Judge, which has been held against the writ petitioner, insofar as the learned Judge stated that the lease period could not have been granted beyond eleven months in the order dated 03.04.2006.

28. In view of the said position, since the writ petitioner has failed to challenge the order of the learned Single Judge by filing necessary Appeal in the manner known to law and the period of eleven months from 03.04.2006 had come to an end as early as on 12.03.2007, nothing else remains to be considered. No other grievance of the writ petitioner can be considered in these proceedings. Insofar as the writ petitioner's challenge to the order of cancellation dated 12.7.2006 is concerned, here again, since, by the order of the learned Single Judge it has been found that the writ petitioner is only entitled for a period of eleven months from 03.04.2006 and the said period of eleven months has come to an end by 12.03.2007, there is no scope for the writ petitioner to raise any grievance as regards the said order of cancellation

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dated 12.7.2006. Therefore, in that Writ Petition also no relief can be granted to the petitioner.

29. We therefore hold that the Writ Appeal has become infructuous, since the period of eleven months as held to be available to the writ petitioner by the learned Single Judge had come to an end by 12.3.2007. For the very same reason, the Writ Petition filed by the petitioner in W.P.No.22507 of 2006 also fails and the same is dismissed. In view of our conclusions on the maintainability of the Cross-Objection No.11 of 2006, his Cross-Objection is also dismissed. Consequently, the connected M.P.No.1/2006 & 1/2007 in W.A.No.1016/2006 and M.P.No.1/2006 in W.P.No.22507 of 2006, are closed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1.The Special Officer,
Villupuram Market Committee,Villupuram.

2.The Secretary,
Villupuram Market Committee,Villupuram.

3.The Superintendent,
Regulated Market, Villupuram

1 cc to mr.P. Wilson, Advocate, R. 16561
1 cc to M/s. Sai Bharath & Ilan, Advocate, Sr. 16552

W.A.No.1016/2006
and
Cross Obj.No.11/2007
and
W.P.No.22507/2006

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